86-268

Supreme Court, U.S.
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No. _____

IN THE
Supreme Court of the United States
October Term, 1986

RICHARD B. SCHOLES,

Petitioner,

vs.

LUE J. ALLRED, VIRGINIA C. BARNES, HOMER F. BARNES, and DOES 1 through 50, Inclusive,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI AND/OR WRIT OF PROHIBITION

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42 pp

QUESTIONS PRESENTED FOR REVIEW

A. May a Court deliberately misapply a State's Statute of Limitations for Fraud with impunity to suppress and dismiss valid litigation?

B. What recourse does a Petitioner have after he initiates an Action for Fraud and

1. Discovers that the Attorneys for Defendants participated in the original fraud,

2. Learns that Petitioner's Attorneys have suppressed his litigation so that he is forced to represent himself, and

3. Realizes that the Attorneys for Defendants along with Petitioner's former Attorneys have conspired with the Judges to have said litigation dismissed by

misusing the Statute of Limitations?

C. When another judge in the same Superior Court has made a ruling and that ruling has been upheld by the Court of Appeal, may a Superior Court Judge, with impunity, reverse the ruling of the Superior Court and the Court of Appeal in a Summary Judgement to suppress and dismiss valid litigation?

D. May a citizen be denied his guarantees under both the Constitution of the State of California and the procedural due process clause of the 14th Amendment of the Constitution of the United States of America?

PARTIES TO THE PROCEEDINGS

Parties to the proceedings in the Supreme Court of the State of California and the Court of Appeal, First Appellate District, Division Five and the Superior Court of Santa Clara County are

RICHARD B. SCHOLES,

Petitioner,

vs.

LUE J. ALLRED, VIRGINIA C. BARNES and HOMER F. BARNES,

Respondents.

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CORRECTED ORDER RE SUMMARY JUDGMENT
OF THE COUNTY SUPERIOR COURT . . . C-1

TABLE OF AUTHORITIES

CASES

In re Jessup, 81 Cal. 408, 481, 1889

Metropolitan Water District vs. Adams,
19 Cal.2d 463, 468, 1942

Mihans vs. Municipal Court,
7 Cal.App.3d 479

People vs. Board, 216 Cal. 1

People vs. Duffy, 79 Cal.App.2d Supp. 875

STATUTES

Amendment XIV, Constitution of the United States

18 United States Code Service,
Section 242

California Code of Civil Procedure,
Sections 338(4) and 437c

California Rules of Court, Rule 27

OTHER AUTHORITIES

Law Dictionary, 2nd Edition, Steven H.
Gifis, Page 116, quoting 45 Atlantic
Reporter 1035, 1036
Page 92, quoting 140 Fed. Supp. 925

OPINIONS

The Order Denying Review After Judgment by the Court of Appeal in the Supreme Court of the State of California, in Bank, is unreported, and is reproduced in the Appendix at pg. A-1.

The Order and Opinion of the Court of Appeal of the State of California, First Appellate District, Division Five is unreported, and is reproduced in the Appendix at pp. B-1 - B-5.

The Corrected Order re Summary Judgment by the Superior Court of Santa Clara County of the State of California is unreported, and is reproduced in the Appendix at pg. C-1.

JURISDICTION

The Judgment of the Supreme Court of the State of California was entered on May 28, 1986.

Jurisdiction before this Court is invoked pursuant to Amendment XIV, Constitution of the United States and was invoked before the Supreme Court of the State of California.

STATUTES INVOLVED

Amendment XIV, Constitution of the United States

"Section 1. .... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

18 United States Code Service

"Section 242. Deprivation of rights under color of law. Whoever, under color of any law, statute, ordinance,

regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; ...."

California Code of Civil Procedure,

§ 338(4)

"Within three years:

An action for relief on the ground of fraud or mistake. The cause of action in

that case is not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake."

California Code of Civil Procedure,

§ 437c

"(a) Any party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense thereto. ....

(c) The motion shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. ...."

No.

IN THE

SUPREME COURT

OF THE UNITED STATES

October Term, 1986

RICHARD B. SCHOLES,

Petitioner,

vs.

LUE J. ALLRED, VIRGINIA C. BARNES, HOMER F. BARNES, and DOES 1 through 50, Inclusive,

Respondents.

PETITION FOR WRIT OF CERTIORARI

AND/OR WRIT OF PROHIBITION

Petitioner, Richard B. Scholes, respectfully prays that a writ of certiorari issue to review the Summary Judgment of the Superior Court of Santa Clara County, State of California, and

the decision of the Court of Appeal, First Appellate District, Division Five, State of California for which review was denied by the Supreme Court of the State of California on May 28, 1986 or,

in the alternative,

that a writ of prohibition issue requiring the Supreme Court of the State of California to appoint another Judge of the Superior Court of Santa Clara County, State of California, to review the said Summary Judgment and to hear oral arguments on said Summary Judgment.

STATEMENT OF THE CASE

A. STATEMENT OF FACTS

This litigation involved the secret and fraudulent sale of real estate to certain Oregon investors named UNUS Investment. Said sale was the subject and essence of said litigation.

Said sale occurred on June 7, 1979.

Petitioner first learned of said sale on November 27, 1979.

Petitioner first learned of the involvement of Lue J. Allred and Petitioner first suspected fraud on June 12, 1980.

Petitioner filed Fraud Case No. 479 750 in the Superior Court of Santa Clara County on July 15, 1981.

The time between the date Petitioner first learned of said sale and/or suspected fraud and the date he filed said case is less than three (3) years.

More important -- the time between the date of said fraudulent sale involving Lue J. Allred and the date Petitioner filed said case is less than three (3) years: i.e., 2 years, 1 month and 8 days.

Therefore it is <u>not</u> possible for said litigation to be barred by the Statute of Limitations.

B. HISTORY OF THE CASE

Petitioner's "Complaint for Fraud" was originally filed on July 15, 1981 with an "Amended Complaint in Damages for Fraud" filed on April 14, 1982. A Demurrer to the Amended Complaint was filed on May 13, 1982, alleging that the Statute of Limitations had run. Said Demurrer was overruled by the Honorable Homer B. Thompson on May 18, 1982 and again by the Honorable John E. Longinotti on June 3, 1982.

Respondent filed a Petition for Writ of Prohibition with Division Two of the First Appellate District as to said Demurrer and said petition was denied on September 22, 1982.

On June 20, 1984, the Honorable Peter G. Stone granted Respondent's Motion for Summary Judgment. On March 12, 1986, Division Five of the First Appellate District affirmed said Summary Judgment "on the grounds that action was barred by the statute of limitations."

The "decision" rendered by Division Five of the First Appellate District to dismiss subject Fraud Case No. 479 750 because said action was not commenced before three years from the discovery of the fraud by Petitioner is totally INCORRECT and the "explanation" for said decision is completely WITHOUT SUBSTANCE IN FACT.

ARGUMENT

There were two (2) transfers of the subject real estate involved.

The first transfer of subject real estate, from Homer F. Barnes to his daughter and partner, Virginia C. Barnes, was not a sale. It took place on March 3, 1976. Petitioner first learned of said first transfer on September 20, 1976.

The second transfer was a sale of subject real estate from Virginia C. Barnes to UNUS Investment. Said sale took place on June 7, 1979. Petitioner first learned of said sale on November 27, 1979.

Petitioner first learned of the involvement of Lue J. Allred in said fraudulent sale on June 12, 1980 although said sale was recorded on June 15, 1979. Said fraudulent involvement by Lue J. Allred was the subject and essence of the action against Lue J. Allred, Virginia C. Barnes and Homer F. Barnes in the Superior Court of Santa Clara County, Case No. 479 750.

Petitioner filed the Fraud Action as to the said sale on July 15, 1981.

According to said Division Five of the First Appellate District, Petitioner first learned of the said sale of subject real estate on September 20, 1976. That transfer was the first transfer from father to daughter and is not the Fraud

Action of Case No. 479 750.

Petitioner, Richard B. Scholes, would be guilty of perjury if he reduced the obvious and deliberate twisting-of-facts and double-talk of said Division Five to excusable error for this petition. Said Division Five affirmed that Petitioner knew on September 20, 1976 about the transfer (sale) of subject real estate (essence of Fraud Case No. 479 750) which occurred on June 7, 1979. Based on this impossible premise, said Division Five FRAUDULENTLY AFFIRMED that said Fraud Action, filed on July 15, 1981, was barred by the Statute of Limitiations. IMPOSSIBLE ! ! ! ! ! ! !

CONCLUSION

The spectacle of the Petitioner being the diminutive David struggling against the arrayed forces of the many legal and judical Goliaths of our hallowed legal halls presents fascinating copy.

The ease with which these various officers of the court were apparently able to dismiss their responsibilities of truth and integrity is incomprehensible.

For the reasons stated, this petition for writ of certiorari and/or writ of prohibition should be granted.

Respectfully submitted,

Richard B. Scholes

In Propria Persona

Dated: August 12, 1986

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APPENDIX A

APPENDIX A-1

ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL

1st District, Division 5, No. A028571

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

IN BANK

SCHOLES

v.

ALLRED et al.

Appellant's petition for review DENIED

BIRD

Chief Justice

APPENDIX B

APPENDIX B-1

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

RICHARD B. SCHOLES,
Plaintiff and Appellant,
v.
LUE ALLRED, VIRGINIA C. BARNES, et al.,
Defendant and Respondent.

A028571

Santa Clara County
Superior Court
No. 479 750

APPENDIX B-2

Plaintiff/appellant Richard B. Scholes appeals from a summary judgment granted defendant/respondent Virginia C. Barnes in appellant's action for fraud in connection with a real estate transfer. Summary judgment was granted on the grounds the action was barred by the statute of limitations. We affirm.

Appellant's amended complaint alleged generally that on February 10, 1976, respondent's father agreed in writing to give appellant a first refusal to purchase certain property in Oregon; that respondent was aware of said agreement; that on March 3, 1976, respondent's father conveyed said property to respondent in violation of his agreement with appellant; and that on June 7, 1979, respondent conveyed said

property to certain Oregon investors. Appellant further alleged that respondent conspired with her father and a named real estate agent to defraud appellant of his right of first refusal, and that they also concealed appellant's rights from the Oregon investors.

The rules for review of summary judgment are well known and need no repetition. (See 6 Witkin, Cal. Procedure (3d ed. 1985) Proceedings Without Trial, § 274 et seq.) The statute of limitations for commencing an action based on fraud is three years from the discovery by plaintiff of the facts constituting the fraud. (Code Civ. Proc., § 338, subd. 4.) Appellant's original complaint was filed July 15, 1981 and the amended complaint on

April 14, 1982. The unverified amended complaint is identical to the original except for an additional allegation that appellant discovered the fraud on June 7, 1979. However, affidavits filed in support of the summary judgment motion reveal that in response to interrogatories appellant admitted he knew of the property transfer to respondent as early as September 20, 1976. In March 1977 appellant was telephoning respondent about the matter to complain. Consequently, it is undisputed that appellant's knowledge of the relevant facts occurred at least four and one-half years prior to filing his complaint -- well beyond the three-year period of limitations.

Affirmed.

APPENDIX B-5

HANING, J.

We concur:

LOW, P.J.

KING, J.

A028571

Scholes v. Allred, et al.

APPENDIX C

APPENDIX C-1

IN THE SUPERIOR COURT

OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

June 20, 1984

RICHARD SCHOLES

VS.

LUE ALLRED

The Court now makes its order on the motion under submission this day as follows: Motion for summary judgment is granted.